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Gray Davis
Governor

William Russell
Bordier's Nursery, Inc.
6356 East McBean Road
Somis, CA 93066

WATER QUALITY CERTIFICATION FOR PROPOSED BORDIER'S NURSERY PHASE III HILLSIDE EROSION CONTROL ORDINANCE PLAN (CORPS' PROJECT NO. 2002-01416-JWM), TWO UNNAMED EPHEMERAL DRAINAGES, TRIBUTARIES TO ARROYO LAS POSAS, CITY OF SOMIS, VENTURA COUNTY (FILE NO. 02-103)

Dear Mr. Russell:

Regional Board staff has reviewed your request on behalf of Bordier's Nursery, Inc. (the Applicant) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on December 5, 2003.

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

The Applicant shall be liable civilly for any violations of this certification in accordance with the California Water Code. This certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this certification action, please contact Valerie Carrillo, Lead, Section 401 Program, at (213) 576-6759.

[Original signed by]
Dennis A. Dickerson
Executive Officer

February 20, 2004
Date

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



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ATTACHMENT A

Project Information File No. 02-103

1. Applicant: William Russell
Bordier's Nursery, Inc.
6356 East McBean Road
Somis, CA 93066

Phone: (949) 559-4221 Fax: (805) 368-4474
2. Applicant's Agent: Alan Nelsen
Water Resource Engineering Associates
2300 Alessandro Drive, Suite 215
Ventura, CA 93001

Phone: (805) 653-7900 Fax: (805) 653-0610
3. Project Name: Bordier's Nursery Phase III Hillside Erosion Control Ordinance Plan
4. Project Location: City of Somis, Ventura County
Latitude: N 34° 16.56'; Longitude: W 118° 59.29'
5. Type of Project: Mass grading for nursery land
6. Project Description:
Purpose:
The purpose of the proposed project is to grade and fill two ephemeral drainages for Bordier's Nursery, in order to maximize the use of the land for a nursery.

Description:
The proposed project will consist of filling and grading the two ephemeral drainages on the Bordier's Nursery, Inc. property. The drainages were previously used to direct excess runoff from the citrus farm which once existed on the property.

During a site visit by the Regional Board and Army Corps of Engineers, the drainages have been identified as being of low-quality and similar to an agricultural ditch. The project impact areas will consist of 0.04 acres of streambed. The ephemeral flows

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will be diverted using a drainage pipe (McBean Drainage to the Black Walnut Woodland) and a re-routed drainage will follow the toe of the east-facing slope.

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| 7. Federal Agency/Permit: | U.S. Army Corps of Engineers
NWP No. 40 (Permit No. 2002-01416-JWM) |
| 8. Other Required Regulatory Approvals: | California Department of Fish and Game
Streambed Alteration Agreement (Notification No. R5-2002-0260)

Resource Conservation District
Hillside Erosion Control Ordinance No. 131 |
| 9. California Environmental Quality Act (CEQA) Compliance: | The California Department of Fish and Game approved the project's Mitigated Negative Declaration on November 15, 2003. |
| 10. Receiving Water: | Two unnamed ephemeral drainages, tributaries to Arroyo Las Posas (Hydrologic Unit No. 403.62) |
| 11. Designated Beneficial Uses: | MUN, IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, WARM, COLD, and WILD |
| 12. Impacted Waters of the United States: | Non-wetland waters (Vegetated streambed): 0.02 permanent acres
Non-wetland waters (Unvegetated streambed): 0.02 permanent acres |
| 13. Dredge Volume: | None |
| 14. Related Projects Implemented/to be Implemented by the Applicant: | The Applicant has not identified any related projects carried out in the last 5 years or planned for implementation in the next 5 years. |

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15. Avoidance/
Minimization
Activities:

The Applicant has proposed to implement several Best Management Practices, including, but not limited to, the following:

- The construction to be performed when drainages are dry;
- Silt fencing will be utilized; and
- Post project erosion control measures are to be constructed to prevent erosion/sedimentation.

16. Compensatory
Mitigation:

The Applicant has proposed to provide a total of 4.63 acres of compensatory mitigation in order to offset impacts associated with the proposed project. The proposed Bordier's Mitigation Plan outlines the following mitigation to be provided:

- 0.18 acres of Willow-black walnut riparian woodland restoration;
- 1.11 acres of Black walnut woodland enhancement;
- 1.99 acres of Black walnut woodland creation;
- 1.00 acres of seasonal marsh/pond creation (Sand Canyon); and
- 0.35 acres of seasonal marsh creation (Mc Bean drainage).

See Attachment B Conditions of Certifications, Additional Conditions for modifications and additions to the above proposed compensatory mitigation.

ATTACHMENT B

Conditions of Certification File No. 02-103

STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR Subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' Section 404 Permit, the California Department of Fish and Game's Streambed Alteration Agreement, and Resource Conservation District's Hillside Erosion Control Ordinance. **These documents shall be submitted prior to any discharge to waters of the state.**
2. The Applicant and all contractors employed by the Applicant shall have copies of this certification, the approved maintenance plan, and all other regulatory approvals for this project on site at all times so they are familiar with all conditions set forth.
3. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the state. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the state.

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4. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the State.
5. The Applicant shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This Certification does not authorize the discharge by the applicant for any other activity than specifically described in the 404 Permit.
6. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses.
7. The Applicant shall allow the Regional Board and its authorized representative entry to the premises, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Certification, or as otherwise authorized by the California Water Code.
8. The Applicant shall not conduct any activities within waters of the State during a rainfall event, or at any period when site conditions would lead to excessive erosion. If any activities are to be held within **five (5) days** of a predicted rainfall event, the Applicant shall stage materials necessary to prevent water degradation on site, and shall ensure that all stabilization procedures are completed prior to the rainfall event.
9. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum **5-foot** buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste. Sufficient time should be allowed to obtain any such permits (generally 180 days). If groundwater is encountered without the benefit of appropriate permits, the Applicant shall cease all activities in the areas where groundwater is present, file a Report of Waste Discharge to this Regional Board, and obtain any necessary permits prior to discharging waste.

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10. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan** to this Regional Board. The plan shall include the proposed method and duration of diversion activities, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for pH, temperature, dissolved oxygen, turbidity, and total suspended solids shall be implemented. These constituents shall be monitored on a **daily** basis during the first week of diversion activities, and then on a **weekly** basis, thereafter, until the in-stream work is complete. Results of the analyses shall be submitted to this Regional Board by the **15th** day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.
11. The Applicant shall restore all areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the State. Restoration shall include grading of disturbed areas to pre-project contours and revegetation with native species. The Applicant shall implement appropriate Best Management Practices to control erosion and runoff from areas associated with this project.
12. The Applicant shall provide COMPENSATORY MITIGATION to offset the proposed permanent impacts to **0.04 acres** of jurisdictional waters by providing **4.63 acres** of seasonal marsh and woodland mitigation areas as specified in the Bordier's Mitigation Plan, which has been approved by the California Department of Fish and Game.
13. Mitigation activities shall comply with the Army Corps of Engineers (Letter No. 02-2) Regulatory Guidance on Compensatory Mitigation Requirements, dated December 24, 2002.
14. All open space and mitigation areas shall be placed within a conservation easement to ensure preservation in perpetuity. Documentation of proper easement placement shall be submitted to the Regional Board within one year.
15. The Applicant shall submit Geographical Positioning System (GPS) coordinates in decimal-degrees format outlining the boundary of the project area. Additionally, the Applicant shall submit a site description, including dimensions of project areas, and pre and post- project photographs.

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16. The project proponent shall submit an **Annual Report** by **January 1st** each year. The report shall describe in detail all of the project/construction activities actually performed during the previous year. This report shall include as a minimum, the following documentation:
 - (a) Color photo documentation of the pre- and post-project conditions;
 - (b) The overall status of project including a detailed schedule of work;
 - (c) Water quality monitoring results compiled in an easy to interpret format;
 - (d) A certified statement of “no net loss” of wetlands associated with this project; and
 - (e) A certified statement from the permittee or his/her representative that all conditions of this certification have been met.
17. The Applicant shall submit to this Regional Board **Annual Mitigation Monitoring Reports** by **January 1st** of each year documenting all restoration and mitigation efforts, including, percent survival by plant species and percent cover. The reports shall include discussion of any monitoring activities and exotic plant control efforts. Representative pre and post photographs from designated stations shall be included in the reports. The reports shall be submitted by **January 1st** of each year for a minimum period of **five (5) years** after planting or until mitigation success has been achieved.
18. All applications, reports, or information submitted to the Regional Board shall be signed:
 - (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates;
 - (b) For a partnership, by a general partner;
 - (c) For a sole proprietorship, by the proprietor;
 - (d) For a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee; and
 - (e) A certified statement from the permittee or his/her representative that all conditions of this certification have been met shall be submitted once their project has been completed.

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19. Each and any report submitted in accordance with this Certification shall contain the following completed declaration:

“I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed they system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Executed on the _____ day of _____ at _____.

(Signature)
(Title)”

20. All communications regarding this project and submitted to this Regional Board shall identify the Project File Number **02-103**. Submittals shall be sent to the attention of the Nonpoint Source Unit.
21. The Applicant shall have copies of this certification and all other regulatory approvals on site at all times, and all contractors employed by the Applicant shall be made aware of the conditions of this certification.
22. Any modifications of the proposed project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application and appropriate filing fee.
23. The project shall comply with the local regulations associated with the Regional Board’s **Municipal Stormwater Permit** issued to Ventura County and co-permittees under NPDES No. CAS004002 and Waste Discharge Requirements Order No. 00-108. This includes the Stormwater Quality Urban Impact Mitigation Plan (SQUIMP) and all related implementing local ordinances and regulations for the control of stormwater pollution from new development and redevelopment.
24. Coverage under this Certification may be transferred to the extent the underlying federal permit may legally be transferred and further provided that the Applicant notifies the Executive Officer at least 30 days before the proposed transfer date, and the notice includes a written agreement between the existing and new Applicants containing a specific date of coverage, responsibility for compliance with this Certification, and liability between them.

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25. The Applicant or their agents shall report any noncompliance of this Certification. Any such information shall be provided verbally to the Executive Officer within 24 hours from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
26. This certification shall expire **five (5) years** from date of this certification. The Applicant may request a renewal of this certification 180 days prior to its termination, if the project as described has not been completed. Renewals may be granted in **five-year (5-year)** increments, are subject to additional filing fees and will require Regional Board approval. If the Applicant fails to request a renewal prior to the certification's expiration, then the Applicant shall submit a new application and appropriate filing fees.
27. *Enforcement:*
 - (a) In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
 - (b) In response to a suspected violation of any condition of this certification, the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - (c) In response to any violation of the conditions of this certification, the SWRCB or RWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance.